

# SENATE BILL REPORT

## SB 5816

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As of February 16, 2007

**Title:** An act relating to actions for wrongful injury or death.

**Brief Description:** Changing the requirements for, and recoveries under, a wrongful injury or death cause of action.

**Sponsors:** Senators Kline, Fairley, Kohl-Welles and Weinstein.

**Brief History:**

**Committee Activity:** Judiciary: 2/16/07.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Dawn Noel (786-7472)

**Background:** Causes of action for wrongful death are created by statute, not common law. Death claims in Washington can be brought pursuant to wrongful death statutes and statutes governing survival of actions. Wrongful death statutes govern post-death damages of the deceased and are for the benefit of beneficiaries specified by statute. Survival statutes govern pre-death damages, and allow continuation of any action which the decedent could have brought if he or she had survived.

Currently a decedent's spouse and children can collect damages from the person who caused the death. However, if a single adult has no children, the adult's parents and brothers and sisters can maintain an action only if they are dependent upon the deceased for support and are resident within the United States. In *Phillipides v. Bernard*, 151 Wn.2d 376, 88 P.3d 939 (2004), the Washington Supreme Court interpreted the support requirement to mean financial dependence, not emotional or psychological support.

A parent of a minor child who has regularly contributed to the child's support, or who is dependent on the child for support, can bring an action for the injury or death of the child. In addition to economic damages, the parent of a minor child is entitled to recover damages for the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship. A parent of an adult child is not authorized by statute to recover damages based upon the loss of companionship of the adult child.

Before 1993, a decedent's estate was not allowed to recover damages for pain and suffering of the decedent. In 1993 the Legislature amended the survival statutes to allow a decedent's estate to recover damages for pain and suffering, anxiety, emotional distress, and humiliation personal to and suffered by the decedent prior to death. However, the Washington Supreme

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Court has held that, in *Otani v. Broudy*, 151 Wn.2d 750, 92 P.3d 192 (2004), recovery of damages for loss of enjoyment of life for the period after the decedent's death is not allowed.

**Summary of Bill:** The requirement that wrongful death actions involving childless single adults can only benefit those parents, sisters, or brothers of the decedent who are dependent on the adult for support and who reside in the United States is eliminated. Any parent or sibling of a childless single adult can be the beneficiary of such a lawsuit.

Non-economic damages which can be recovered in wrongful death actions are expanded to include the decedent's loss of life, enjoyment of life, and shortened life expectancy.

The requirement that parents of minor children must have contributed to or received financial support from the child in order to maintain an action for injury or death to the child is eliminated. Parents must have significant involvement in the child's life, including giving or receiving emotional, psychological, or financial support to or from the child, in order to maintain an action. Damages which can be recovered by parents of a child in an action for death or injury are expanded to include loss of the child's emotional support. These provisions apply to all parent-child relationships, regardless of whether the child has attained the age of majority.

These provisions apply retroactively to those claims that are not time-barred, as well as to any claims pending in any court on the effective date.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.